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OFFICE OF PETITIONS

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In re Patent No. 7,738,910 : DECISION ON REQUEST FOR
Kobayashi : RECONSIDERATION OF
Issue Date: June 15, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/796,232 :
Filed: March 9, 2004 :
Attorney Docket No. FUSA 21.043 :

This is a decision on the petition filed on June 3, 2010, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by five hundred and seventy-nine (579) days.

The request for reconsideration of the patent term adjustment under 37 CFR 1.705(d) is **DISMISSED**.

On June 15, 2010, the above-identified application matured into U.S. Patent No. 7,738,910, with a revised patent term of 558 days. By the instant petition, patentees assert that the patent term should be adjusted by 21 days pursuant to 37 CFR 1.702(b) and 37 CFR 1.703(b). It is noted that patentees failed to account for the filing of the notice of appeal on January 10, 2008. The Office reminds patentees that the period consumed by appellate review, whether successful or not, is excluded from the calculation of B delay. See 35 U.S.C. 154(b)(1)(B)(ii). In this instance, the period consumed by appellate review is 21 days, beginning on the date on which the notice of appeal to the Board of Patent Appeals and Interferences was filed, January 10, 2008, and ending on the day before the date the Request for Continued Examination was filed, January 30, 2008. Thus, the B delay is 306 days (327 – 21). Accordingly, the patent term adjustment is 558 days (588 days of A delay + 306 days of B delay – 0 days of overlap - 336 days of applicant delay).

In view thereof, the patent term adjustment of 558 days indicated in the patent is correct.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

Deposit account 50-1290 will be charged \$200.00 for the fee set forth in 37 CFR 1.18(e). No additional fees are required.

Further correspondence with respect to this decision should be addressed as follows:

By Mail: Mail Stop Petition
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Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3222.

/Kenya A. McLaughlin/

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